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October 2, 2023

VIA ECF

The Honorable Denise L. Cote
United States District Court Judge
Southern District of New York
500 Pearl Street, Room 1910
New York, New York 10007

Re. *In Re: Acetaminophen – ASD–ADHD Products Liability Litigation*, Case No. 1:22-md-03043 (S.D.N.Y.) – Response to Court’s Order Seeking Parties’ Proposals Regarding Logistics of Rule 702 Hearing, Dkt. 1190
This Document Relates To: All Cases

Dear Judge Cote:

This letter responds to your order seeking the parties’ proposals regarding the logistics of any Rule 702 hearing, Dkt. 1190. Plaintiffs understand that Defendants seek a full week (or more) of court time, composed of twenty hours per side of direct and cross examinations of expert witnesses followed by 90 minutes per side of closing argument. Those limits would be in addition to any time spent addressing questions from the Court. Plaintiffs further understand that Defendants’ proposal would require all of Plaintiffs’ experts to testify before Defendants’ experts.

If the Court would find a lengthy hearing useful, Plaintiffs are of course prepared to proceed in that fashion. But in a matter of weeks the Court will have a full set of briefs, and it already has all expert reports, deposition transcripts, and much of the relevant scientific literature. The parties’ expert witnesses in this case have been cumulatively subject to over 80 hours of cross examination. Plaintiffs see no need for the time and expense associated with preparing for and conducting a week-long hearing to supplement the extensive Rule 702 record if such a proceeding will not most efficiently assist the Court in resolving the pending motions. If the Court would like such a hearing, Plaintiffs do not agree with Defendants’ proposal that all of Plaintiffs’ experts should testify before Defendants’ experts, particularly if Defendants’ experts are exempt, as experts often are, from the testifying-witness rule.

Plaintiffs therefore propose, as an alternative, a course that will allow the parties to address the areas of concern for the Court. Specifically, Plaintiffs propose that on or around November 1, the Court inform the parties (i) whether it requires a Rule 702 hearing at all, and if it does, (ii) which witness or witnesses should be prepared to testify, (iii) the amount of time each side will have to present and cross examine each witness, and (iv) the topic or topics the Court wishes each witness to focus upon. Plaintiffs’ proposal will provide the witnesses and counsel more than a month to arrange their schedules and prepare to testify, while ensuring that any Rule 702 hearing is tailored to best assist the Court in its deliberations.

Thank you for your consideration of Plaintiffs’ proposal.

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Respectfully submitted,

/s/ Ashley Keller

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